and that, therefore, there could be no refund for those years based upon the depletion allowance discussed in this report. In the light of the events outlined above, the depletion allowance at the time would have been based upon a percentage of the full gross income attributable to the finished manufactured product. The delay so created operated to the benefit of the Government, for ultimately the company could only claim a percentage of one-half the income attributable to the finished manufactured product. In connection with the hearing, the subcommittee was advised that the amount involved in this bill is $113,152.65. The Treasury Department has advised the committee that this is the amount that Boren Clay Products Co. would recoup for the taxable years covered by the bill which are the fiscal years 1952 through 1957. This is computed by excluding any income attributable to the delivery of the finished product and does not include any amount for interest.

"In view of the particular circumstances of this case, the committee recommends that the bill be considered favorably."

The committee has considered the record made before the subcommittee of the Committee on the Judiciary of the House of Representatives and the recommendation of the subcommittee of the Committee on the Judiciary of the Senate and recommends the bill favorably.

Mr. ERVIN. I thank the Senator for his kindness in withdrawing his objection.

Mr. MILLER. I thank the Senator from North Carolina for his gracious comments.

I should like the RECORD to show that, based upon the letter from the Treasury Department's legislative counsel, the total amount of benefits covered by the bill will be approximately $179,400, which includes interest. The committee report shows only the basic tax amount.

The bill (H.R. 4766) was ordered to a third reading, was read the third time, and passed.

Mr. MANSFIELD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. ERVIN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER OF BUSINESS

Mr. HART. Mr. President——

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. MANSFIELD. Mr. President, will the Senator from Michigan yield, provided that in doing so he shall not lose his right to the floor?

Mr. HART. I am happy to yield to the Senator from Montana.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HART. Mr. President, I yield to the Senator from Illinois.

LEGISLATIVE PROGRAM

Mr. DIRKSEN. Mr. President, I ask the majority leader [Mr. MANSFIELD] about the calendar for the remainder of the day, tomorrow, and possibly for the remainder of the week.

Mr. MANSFIELD. Mr. President, I am glad that the Senator did not ask me about the calendar for next month, and possibly October.

In response to the question raised by the distinguished minority leader, it had been anticipated that today in addition to the conference report on the State, Justice, and judicial appropriation bill, we might have had the Northwest power intertie, and the tax equalization conference reports, both of which have been approved. But in both instances, the House has to act first.

We hope there will be further conference reports during the week. They will be taken up at any time, soon after they are sent here. Among these are conference reports on the wilderness bill; appropriations covering agricultural, military construction, housing, land conservation, and the National Defense Education Act amendments.

It is anticipated that tomorrow the Senate will very likely take up the food-for-peace, and the Labor, HEW appropriations. Later in the week, we may have the social security bill, reported out of the Finance Committee today, and the Appalachia legislation.

There is also a supplemental appropriation bill which I had hoped would be available, although I am doubtful of that at the moment.

We shall try to do as much as we possibly can before the Senate recesses on Friday night next, to come back on August 31. The only real difficulty that I can see at the present time is with respect to the pending amendment to the Foreign Assistance Act.

ORDER OF BUSINESS

Mr. DIRKSEN. Mr. President, I ask the distinguished Senator from Michigan [Mr. HART] whether he can advise us how many more speeches and speakers there are to belabor this amendment for the remainder of the week.

Mr. HART. I would dislike to respond to a question which includes in it the word "belabor."

There are a number of us who feel that we have yet to develop a record against which the Senate will be in a position to judge the full effect of the proposed amendment.

Mr. DIRKSEN. Let me modify the term I used, and say "profoundly argue."

Mr. HART. I would not even buy the "profoundly."

I anticipate that there are perhaps seven or eight Senators who at the moment intend to make every effort to clarify, so far as the opponents of the amendment are in a position to do so, the effect of the amendment. I anticipate that the Senator from Illinois [Mr. DIRKSEN] might wish to explain what he intends the amendment to do.

Mr. DIRKSEN. My speech shall be very short. I doubt very much if I need to consume more than 10 or 15 minutes to speak on what is considered at the moment to be a highly important subject.

May I now inquire of the distinguished Senator whether he is the last speaker this evening?

Mr. HART. With respect to the discussion of the pending amendment, I am the last speaker, as far as I know. I feel sure that I can reassure the Senator that I am the last speaker on the amendment.

Mr. DIRKSEN. How long does the Senator expect to illuminate the Senate?

Mr. HART. Until 8 o'clock.

ORDER FOR ADJOURNMENT TO 10 A.M. TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 10 o'clock tomorrow morning.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE MEETINGS DURING SENATE SESSION TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that all committees may be permitted to sit during the session of the Senate tomorrow until 12 o'clock noon.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT OF FOREIGN ASSISTANCE ACT OF 1961

The Senate resumed the consideration of the bill (H.R. 11380) to amend further the Foreign Assistance Act of 1961, as amended, and for other purposes.

Mr. HART. Mr. President, the distinguished minority leader earlier inquired as to the length at which those of us who have serious concern about the pending amendment which he offered intended to speak. As I indicated in my reply, I felt that there were some of us who are sufficiently concerned lest the Senate act on the amendment without an explanation in full in the RECORD of the effect that the amendment would have on each of the 50 States, and that there will be full discussion conceivably for the remainder of this week on the amendment.

Tonight I should like to attempt to describe the consequences that the

amendment might have in the State with which I am most familiar and which I am privileged in part to represent. Before doing so, I should like to underscore one paragraph of the Supreme Court decision which so alarmed the Senator from Illinois. It is the decision in the case of Reynolds against Sims. It has been described as, and in truth it is, a landmark decision.

If we listen to some, we might think that the Supreme Court in concluding that the 14th amendment "equal protection of the laws" means that one person's vote should not have more or less effect than any other person's vote in the State legislature had required that the implementing of the decision be done in precipitate fashion. I submit that that is not the case. It is for that reason that I should like to read one paragraph which expresses the Supreme Court's attitude with respect to the actions that the district courts should take in implementing its decision. The paragraph is to be found on page 50 of the decision. It is a decision written, as I believe the RECORD earlier shows, by Mr. Chief Justice Warren.

Parenthetically, I have heard the minority decision described as a superlative expression of a point of view. Indeed it is. I should like to say that the majority opinion as written by the Chief Justice is a superlative expression of the other and the constitutional point of view.

In this paragraph, which I believe eliminates, or should eliminate, the suggestion that the Supreme Court was unmindful of the consequences that its decision would occasion, the Chief Justice said:

> We do not consider here the difficult question of the proper remedial devices which Federal courts should utilize in State legislative apportionment cases. Remedial technique in this new and developing area of the law will probably often differ with the circumstances of the challenged apportionment and a variety of local conditions. It is enough to say now that, once a State's legislative apportionment scheme has been found to be unconstitutional, it would be the unusual case in which a court would be justified in not taking appropriate action to insure that no further elections are conducted under the invalid plan.

Now to the important language of conditions. The Chief Justice then wrote:

> However, under certain circumstances, such as where an impending election is imminent and a State's election machinery is already in progress, equitable considerations might justify a court in withholding the granting of immediately effective relief in a legislative apportionment case, even though the existing apportionment scheme was found invalid. In awarding or withholding immediate relief, a court is entitled to and should consider the proximity of a forthcoming election and the mechanics and complexities of State election laws, and should act and rely upon general equitable principles. With respect to the timing of relief, a court can reasonably endeavor to avoid a disruption of the election process which might result from requiring precipitate changes that could make unreasonable or embarrassing demands on a State in adjusting to the requirements of the court's decree. As stated by Mr. Justice Douglas, in concurring in *Baker* v. *Carr*, "any relief accorded can be fashioned in the light of well-known principles of equity."

It seems to me that any lawyer reading that language of the Court would say, "That is exactly as it should be. The Court has acted prudently and with restraint." Any legislator or any Member of the Congress would reach a sounder conclusion if he were to say, "A Federal district court somewhere in this land is more familiar with the circumstances that affect the implementation of this constitutional requirement than the Congress sitting in Washington."

I believe that, at root, what we are asked to do in the amendment now pending is to say to the many scores of district courts across the country, "Move over. We think that we here in Washington have a better time schedule and a clearer understanding of the equitable claims in your district than you do."

People will jump up and say, "Oh, but we are not telling the Court that." Because of the concentrated effort to adopt the amendment, I am persuaded that its proponents must believe that they are influencing, affecting, and telling the Court something, and that is exactly what we are telling them: "We know better than you the schedule that should apply. We here in Washington can suggest a more prudent course than you, situated locally, can apply."

That is a rather harsh thing to say about the proposed amendment, but I think at root that is exactly what we are asked to do. It is for that reason, among others, that there are some of us who are determined that there be full understanding of the implications of what we are doing before the roll is called.

Mr. President, year after year we answer a good many rollcalls, and while at the moment most of them seem to have a vital and important effect upon our society, I suggest that in history's long-term view the roll that is to be called on the amendment will have greater significance than virtually any other that we shall ever respond to save the rollcall on the question of peace and war.

Mr. President, in my opening comments I suggested that it would be essential that the Senate have before it an analysis of the effect that this amendment would have in each of the several States. Had the matter been reviewed by a standing committee of the Senate, this would have been the first order of that committee's business. The Senate would have expected its committee, first, to ascertain what the circumstances were in each of the States, and then it would have the judgment of the committee as to the consequences in those 50 States that would follow if the Congress added to the foreign aid bill the Dirksen amendment.

Very unfortunately, in my view, there were no committee hearings. There is no committee report. That leaves us, then, with the responsibility for developing, State by State, some understanding of the situation in each State with respect to the apportionment and any proposed reapportionment of its legislature. One highly significant reason for having this material available is to assess the argument made in support of the amendment that it is essential that we avoid chaos across the country. I suggest that, until we know the facts in each of the States, it is no less likely that the adoption of this amendment will produce equal or greater chaos. Indeed, it might well be easier to argue and a stronger case might be made that the adoption of this amendment would increase rather than reduce what its proponents describe as chaos.

Let me now attempt to review briefly the chronology of legislative apportionment in Michigan. Before doing so, I suggest that a similar review be prepared and placed in the RECORD analyzing the proceedings that are pending, if any, and the nature of the apportionment in each of the other States. Absent these specific facts, how are we to judge, how can we to conscientiously conclude, that an amendment such as this is desirable?

Mr. CHURCH. Mr. President, will the distinguished Senator from Michigan yield for the purpose of permitting the Senate to consider a conference report on the Seneca Indian bill?

Mr. HART. I am glad to yield to the distinguished Senator from Idaho. I do so conscious of the importance and of some highly emotional interest in the bill on which he is now about to present a conference report. It may well be that, in the analysis of that conference report, we shall find that the time will have run to the point it was indicated the Senate would be sitting. In that case, I shall be glad to place in the RECORD at a later time an analysis of the Michigan apportionment situation.

Mr. CHURCH. I thank the Senator for yielding.

FLOWAGE EASEMENT AND RIGHTS-OF-WAY OVER LANDS WITHIN THE ALLEGANY INDIAN RESERVATION—CONFERENCE REPORT

Mr. CHURCH. Mr. President, I submit a report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 1794) to authorize the acquisition of and the payment for a flowage easement and rights-of-way over lands within the Allegany Indian Reservation in New York, required by the United States for the Allegheny River (Kinzua Dam) project, to provide for the relocation, rehabilitation, social and economic development of the members of the Seneca Nation, and for other purposes. I ask unanimous consent for the present consideration of the report.